IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.156 OF 1992.

The State of Maharashtra. .... Applicant.

Versus.

1. Balasaheb Somji Aher.
2. Hemant Bhaurao Aher. .... Respondents

Shri A.S.Gadkari, A.P.P. for the Appellant.

Shri R.M.Hardas for the Respondents Nos.1 & 2.

CORAM : ABHAY S. OKA, J.

DATED : 11th August, 2005.

ORAL JUDGMENT.

1. Heard the learned A.P.P. for the State and the learned Advocate for the Respondents Nos.1 and 2. The challenge in this Revision Application is to the order dated 10th April 1992 passed by the learned Judicial Magistrate First Class, Kalwan by which the application made by the Respondents (Accused) for discharge under section 245 of the Code of Criminal Procedure 1973 has been allowed.

2. The Respondents were prosecuted for the offences punishable under sections 418 and 420 read with section 34 of the Indian Penal Code. The F.I.R. was filed by

one Sahebrao Patil, Deputy Education Officer, Nashik. The allegation in the F.I.R. is that the Respondents had started a D.Ed.College in June/July 1991 by the name of Kailaswasi Somji Laxman Aher Adyapak Vidyalaya. The allegation is that the D.Ed. College has been started without prior permission/sanction from the Government. The allegation is that the Respondents have collected huge amounts from various students and have thereby cheated the members of the public and especially the students. Reliance was placed upon the Circular issued by the State Government on 9th August 1991. By the said Circular, the State Government directed that the concerned Officer of the Education Department should ensure that the unauthorised D.Ed.Colleges will not be opened and when it is noticed that unauthorised colleges have started, appeal should be made in newspapers calling upon the parents and students not to secure admission in such colleges and complaints should be lodged with the Police against managements of such Colleges. The allegation is that though intimation was sent to the Respondents to close the College, the College was not closed.

3. The learned A.P.P. submitted that notwithstanding the Circular issued by the State Government on 9th

August 1991, the D.Ed.College was opened by the Respondents and large number of students were admitted by collecting fees of Rs.1500/- each. The learned A.P.P. submitted that the learned trial Judge has not considered various statements which were recorded during the course of investigation. He submitted that large number of students have parted with huge amounts in favour of the Respondents on the basis of the representation that the College was authorised. He submitted that notwithstanding the direction given by the State Government, the Respondents continued to run their College.

4. The learned Counsel for the Respondent No.1 has supported the impugned Judgment and order by pointing out various findings recorded by the learned Magistrate. He submitted that after lapse of so many years the Respondents cannot be made go undergo a trial.

5. I have considered the submissions. Section 418 and 420 of the Indian Penal Code were sought to be invoked. The allegation of the prosecution seems to be that the D.Ed.College was opened by the Respondents without there being any permission of the Government. It is obvious that so far as any monetary loss to the State Government

is concerned, no case is made out. The learned Magistrate has referred to the challan issued by the Treasury Office which shows that the Respondents had deposited necessary charges with the State Government. There is nothing on record to show that the students who had secured admission to the College by paying fees came forward to file any complaint or have supported the prosecution.

6. In my view on a plain reading of the F.I.R. and the material on record, case of deception or cheating is obviously not made out. As stated earlier, the students have not come forward to support the prosecution. Section 420 of the IPC will obviously not apply as none of the ingredients of the said section are satisfied. At the highest what can be said is that the Respondents opened a D.Ed. College without the permission of the State Government and notwithstanding the Circular issued by the State Government the College was not closed down. The F.I.R. was registered in October 1991. The Respondents were discharged by the impugned order in April 1992. Considering the findings recorded by the learned Magistrate, I find that there is no error in the view taken by the learned Magistrate. There is no merit in the Revision Application and the same is rejected.

Judge.